

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**SEAN BURK, by his next friend Mirasol Burk, )  
and RYAN TORPHY, by his next friend John )  
Gonzales, )**

**Plaintiffs, )**

**vs. )**

**Case No. 07-CV-0349-MJR**

**STEVE & BARRY’S ILLINOIS, LLC, and )  
STOLTZ MANAGEMENT OF DELAWARE, )  
INC., )**

**Defendants. )**

**ORDER**

**REAGAN, District Judge:**

A status conference was held in this matter on June 17, 2010. Attorney Darrell Dunham appeared for Plaintiffs, and John Bruegger appeared for Defendant, Steve & Barry’s.<sup>1</sup> Counsel for Defendant, Stoltz Management of Delaware, Inc., failed to appear. The Court granted on the record Mr. Dunham’s oral motion to withdraw his representation of Plaintiffs, Burk and Torphy. The Court construes the oral motion to include the withdrawal of his co-counsel, Tara L. Dahl, who is an associate in Dunham’s firm. At the conclusion of the conference, the Court set a second in-court status conference for Friday, July 16, 2010, at 11:30 a.m.

The Court advised Plaintiff Sean Burk’s father, Truman Burk, that he would not be able to represent his son in court. *Elustra v. Mineo*, 595 F.3d 699, 705 (7th Cir. 2010) (“[A] next friend may not, without the assistance of counsel, bring suit on behalf of a minor party.”) (citing *Cheung v. Youth Orchestra Found. of Buffalo, Inc.*, 906 F.2d 59, 61 (2d Cir. 1990) (“[A]

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<sup>1</sup>Mr. Bruegger advised the Court that he will promptly enter his appearance in this case.

**non-attorney parent must be represented by counsel in bringing an action on behalf of his or her child.”); *Meeker v. Kercher*, 782 F.2d 153, 154 (10th Cir. 1986) ( *per curiam* ) (“Under Fed.R.Civ.P. 17(c) and 28 U.S.C. § 1654, a minor child cannot bring suit through a parent acting as next friend if the parent is not represented by an attorney.”)).** Because Sean Burk is a minor, he must be represented by an attorney to prosecute this action. Accordingly, if Mr. Burk wishes to proceed, he must obtain counsel and counsel must enter an appearance by the date of the status conference - July 16.

The Court was advised that Mr. Torphy is no longer a minor. Since Mr. Dunham has been allowed to withdraw, Mr. Torphy lacks any representation in this Court. If Mr. Torphy wishes to proceed with this action, he must either enter an appearance *pro se* or obtain new counsel - and counsel must have entered an appearance - by the July 16 status conference.

The Court warns Plaintiffs that failure to comply with this Order will result in dismissal of this cause of action.

Because the parties are presently without representation, the Court directs the Clerk of Court to mail a copy of this Order (as well as any future documents filed prior to counsel’s entry of appearance) to the following addresses:

Mr. Truman Burk  
281 Meadowood Lane  
Carbondale, Illinois 62901

Mr. Ryan Torphy  
2420 South Illinois Avenue  
Carbondale, Illinois 62903

Lastly, the Clerk's Office shall correct the docketing sheet to reflect that Darrell W. Dunham and Tara L. Dahl have withdrawn from the case.

**IT IS SO ORDERED.**

**DATED this 18th day of June, 2010**

**s/Michael J. Reagan**  
**MICHAEL J. REAGAN**  
**United States District Judge**